Court No.2

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 192 of 2003 (S/B)

Satish Chandra S/o Late Sri Moti Ram,
Resident of Village-Harsoli, Post Office-
Bhowali, District-Nainital.

..... Petitioner

Versus

1. State of Uttaranchal through its Principal Secretary, Public Works Department, Civil Secretariat, Dehradun.

2. Engineer-in-Chief (Establishment-B), Public Works Department, Uttaranchal, Dehradun.

3. Chief Engineer, Kumaon Zone, Public Works Department, Almora,

4. Superintending Engineer, 22nd Circle, Public Works Department, Nainital.

..... Respondents

Date: November, 14, 2006

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

(Delivered by Hon'ble P.C. Verma, J.)

This petition has been filed by the petitioner seeking the following reliefs:-

(i) Writ, order or direction in the nature or certiorari quashing the impugned judgment and order dated 25.02.2003 passed by the learned State Public Services Tribunal

Uttaranchal, Dehradun in Claim Petition No.26/T/2002 (Satish Chandra versus State of Uttaranchal and others) (Contained in Annexure-15).

(ii) Writ, order or direction in the nature of mandamus commanding the opposite parties to regularize the services of the petitioner to the post of Stenographer w.e.f. 13.10.1987 on which date the petitioner was posted as Stenographer together with all other consequential service benefits.

(iii) Writ, order or direction in the nature of mandamus commanding the opposite parties to place the name of the petitioner in the gradation list of Stenographers working in Public Works Department besides the benefit of 18% reserved quota for the Scheduled Caste Candidate.

(iv) Any other further relief which this Hon'ble Court may deem fit and proper in the circumstances of the case be also passed in favour of the petitioner as against the opposite parties besides the cost of this writ petition.

2. The petitioner's case in brief is that after qualifying the interview he was appointed, vide letter dated 24.8.1982 (contained in Annexure-1 to the writ petition) to the post of Junior Clerk in the pay scale of Rs. 354-550 and he joined his duty on 28.8.1982 in the office of respondent No.4. Thereafter the petitioner was appointed as Stenographer on ad hoc basis in the pay scale of Rs. 470-735 by the respondent No.4 and the

petitioner has joined his duty on such post on 13.10.1987. Since then the petitioner is continuously working to the post of Stenographer in the office of respondent No.4. It is alleged by the petitioner that despite the clear vacancy his services have not been regularized to the post of Stenographer. It is also alleged by the petitioner that he is a qualified Stenographer and he has discharged his duties as Stenographer successfully for more than 15 years. The petitioner made representations on 10.12.1990 and 17.4.1991 to the respondent No.3 requesting therein that his services to the post of Stenographer be confirmed. The respondent No.2 issued a gradation list of various Stenographers working in the Public Works Department on 06.09.1992 in which the name of the petitioner appeared at Serial No.77. The respondent No.2 again issued a seniority list of Stenographers on 26.5.1993 but in the said list the name of the petitioner did not find place though he has completed more than 7 years of service in the cadre of Stenographers. The petitioner made a representation for his seniority but in vain. The petitioner was left with no other alternative remedy than to approach before the U.P. Public Service Tribunal Luck now. The Tribunal granted the interim relief on 26.11.1993 allowing the petitioner to continue as Stenographer till further orders. The said interim order remained in force till final disposal of the claim petition on 25.2.2003.

It is alleged that the Public Service Tribunal Uttaranchal on 25.2.2003 dismissed the claim petition of the petitioner holding that the petitioner was appointed as Junior Clerk and he was never appointed to the post of Stenographer and it was a temporary arrangement on

the resignation of regular Stenographer Sri Kunwar Singh Mehra in July 1987. The petitioner contended that since his work and conduct had all through out been satisfactory and appreciated by the seniors, therefore he deserved regularization in that post, but the respondents were evading the issue despite the fact that he belonged to reserved category of scheduled caste and was otherwise also eligible for promotion.

3. The respondents denied that the petitioner was appointed on the post of Stenographer in the Public Works Department. The respondents also contended that after the transfer of Sri Tara Dutt, Stenographer from the office of respondent No.4 to the office of respondent No.3, Sri Kunwar Singh was asked to conduct the work of Stenographer in the office of respondent No.4 but on his resignation from the said post of Stenographer, the petitioner was directed to work on the post of Stenographer on temporary basis till the regular appointment is not made by the department and on the date when the initial appointment of the Stenographer to the said post was made the petitioner asked to join back his duty on his initial post of appointment i.e. Junior Clerk. The respondents also contended that the post of Stenographer in the circle is to be filled by promotion, because initial appointment of the petitioner is that of Junior Clerk, hence the petitioner cannot be regularized to the post of stenographer. The respondents further contended that prior working of the petitioner as Stenographer in the office of Regional Deputy Director Census, U.P., Kumaon Division, Nainital as he alleged cannot create any lien to the petitioner. The respondents

also contended that the petitioner's arrangement came to an end on the promotion of one Sri Kundan Ram Arya in regular course of business and it was only as a result of this order that the petitioner had to revert back to his parent cadre of the Junior Clerk.

4. We have heard Sri S.N. Babulkar, learned Senior Advocate for the petitioner and learned Standing Counsel for the respondents. The main contention of the learned counsel for the petitioner is that the petitioner was appointed as Stenographer in the pay scale of Rs.470-735/- on ad hoc basis, vide order dated 12th October, 1987. Since the petitioner was appointed on ad hoc basis therefore, it was provided in the appointment letter that in case of Sri Tara Dutt Stenographer returns back to his original post or any other substantively appointed Stenographer is posted by the higher authorities, the petitioner shall be reverted to his original post and the lien of the petitioner shall remain intact on the post of junior clerk. The petitioner continued to serve as Stenographer till 1993 and thereafter on the promotion of one Sri Kundan Ram Arya in regular course of business, he was reverted. The petitioner had filed a claim petition for regularization on 25.08.1993 while his order of reversion came to be passed on 30.10.1993. It is not in dispute that the petitioner's appointment was ad hoc one, vide order dated 12th October, 1987 and he was entitled to be considered for regularization in accordance with the rules known as **Uttaranchal Regularization of Ad-hoc Appointments (on posts outside the purview of the Public Service Commission) Rules, 2002.** The Tribunal has not considered these rules and as such the petition was dismissed.

5. Since the petitioner was entitled to be considered for regularization on the post of Stenographer in accordance with the aforesaid Rules, therefore the Tribunal ought to have been given an order to the respondents to consider the case of the petitioner under the aforesaid Rules. The petition could not have been dismissed. Thus, the impugned judgment cannot be sustained and is hereby set aside. The respondents are directed to consider the case of the petitioner for regularization in terms of these rules against any vacant post of Stenographer in Public Works Department in the State of Uttaranchal within a period of two months from the date of production of certified copy of this order.

6. The petition is allowed accordingly. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

P.Singh